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**Section III:**  
**AMENDMENT UNDER 37 CFR §1.121 to the**  
**DRAWINGS**

No amendments or changes to the Drawings are proposed.

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**Section IV:**  
**AMENDMENT UNDER 37 CFR §1.121**  
**REMARKS**

**Request for Telephone Interview**

Applicant requests a telephone interview with the examiner following receipt of the present reply and amendment in order to ascertain examiner's initial position regarding the amendment, to offer possible additional amendments, and to consider examiner's suggestions. Examiner is requested to contact the undersigned at the telephone number listed to indicate a date and time of the examiner's convenience for the telephone interview.

**Rejections under 35 U.S.C. §101**

In the Office Action, claims 11 - 15 under 35 U.S.C. §101 were rejected for being directed towards non-statutory matter, citing that the listed elements are not a process or a machine. Applicant has amended claims 11 - 15 to clarify that the elements of the claim are part of an automated bidding system, which is a machine, such as a computer operating one or more computer processes, one or more circuits, or a combination of both. As such, the elements are devices or sub-machines themselves, and are directed towards statutory matter.

Applicant requests withdrawal of these rejections on these grounds.

**Rejections under 35 U.S.C. §102(e)**

In the Office Action, the examiner has rejected claims 1 - 15 under 35 U.S.C. §102(e) for lack of novelty as being anticipated by U.S. published patent application 20020038282 to Montgomery (hereinafter "Montgomery").

Applicant has amended independent claims 1, 6, and 11 to recite our counter bid pacing process or mechanism, about which Montgomery is silent. Additionally, applicant requests that if rejections are maintained over Montgomery, that examiner provide a copy of the provisional application to which Montgomery claims filing priority, including establishing where in Montgomery's provisional application the relied upon disclosure is found.

We have disclosed our counter bid pacing as the process of determining if the current bid level meets the bid criteria, and if so, placing a counter bid only after a certain counter bid delay

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has elapsed. This prevents the automated bidding agent from rapidly counter bidding each bid as it is placed into the auctions by other participants, which otherwise might signal to the other participants that an automatic bidding agent is bidding, or which may start a "bidding war" between multiple automated bidding agents.

Montgomery only discloses using the "time to auction close" time value in its determination of when to place bids (paras. 0020, 0062, 0063, 0068, 0072, 0073], including insuring that the close times of the auctions are staggered (para. 0063), and including a time-to-close delay (para. 0077). However, Montgomery is silent regarding our counter bid delay mechanism, and there is no suggestion in Montgomery to address this problem.

For these reasons, Montgomery fails to teach all of our claimed elements, steps, and limitations, does not recognize a problem to which our invention is directed, and provides no suggestion or motivation to modify their invention to meet the limits of our claims.

With respect to the effective filing data afforded to the Montgomery published patent application, it is well known that many non-provisional patent applications are not duplicates of the provisional applications to which they claim priority. In many situations, the later-filed non-provisional includes more information than the earlier-filed provisional application, such information not being afforded the earlier filing date. As the filing date of the cited published non-provisional Montgomery patent application is after the filing date of our patent application, applicant requests that if rejections are maintained over Montgomery, that applicant be supplied with a copy of Montgomery's provisional patent application, and that examiner indicate where in the provisional application support for the rejections is found, per MPEP 706.02(f)(1)I(B).

As a matter of inquiry, it appears that the Office Action may contain a typographical error regarding the rationale for rejections of claims 3, 8, 13, where that it is stated that "Montgomery *does not* appear to expressly disclose ...". As this is grouped with rejections under 35 U.S.C. §102(e), not §103, and whereas no rationale for an obvious modification or combination follows, it is assumed by applicant that this is a typographical error which is meant to read "Montgomery *appears* to disclose ...". However, if this is not the case, Applicant requests Examiner to contact the undersigned representative to clarify the intention of the rejection rationale.

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Claims 2 - 4, 6 - 9, and 12 - 14 depend from claims 1, 6, and 11, respectively, and thus they include the same steps, elements, and limitations not taught by Montgomery. For these reasons, Applicant requests reconsideration and withdrawal of the rejections of claims 1 - 4, 6 - 9, and 11 - 14 over Montgomery.

Applicant's Good Faith Response

The reply herein is believed by Applicant to be a full and complete response to every ground of rejection. Should Examiner believe that a ground of rejection has not been addressed, Applicant requests Examiner to contact the undersigned representative for prompt correction or explanation of Applicant's intent.

Respectfully,

/ Robert Frantz /

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**FRANKLIN GRAY PATENTS, LLC**